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From:

Sent: Friday, March 19, 2010 3:45:15 PM

To:

Cc:

Subject: FW: Statute of Limitations on Refunds

- please see the email from my colleague, below. The additional amount is not permitted under section 6402. Please contact me with any questions.

From:

Sent: Friday, March 19, 2010 12:43 PM

To:

Cc:

Subject: FW: Statute of Limitations on Refunds

In the case of any overpayment, section 6402(a) authorizes the Secretary, within the applicable period of limitations, to credit the amount of such overpayment against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e) and (f) refund any balance to such person.

However, credits and refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Treas. Reg. § 301.6402-2(a)(1). Furthermore, no refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. Treas. Reg. § 301.6402-2(b). Here, the additional unclaimed \$340,000 is on account of an AMT calculation, but the claimed refund is on account of NOL carrybacks. Since it appears from the facts that the taxpayer did not make a claim for refund based on AMT calculations prior to the expiration of the SOL on June 30, 2009, the Service should not refund the \$340,000 resulting from AMT calculations to the taxpayer. We have not found any authority that Joint Committee review of a refund changes the requirement to make a timely claim for refund that sets forth the grounds for the refund.

Please let me know if you have additional questions.